

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

Case No. 99-80241-9

Honorable Patrick J. Duggan

v.

MAURICIO RODRIGUEZ,
Defendant.

OPINION AND ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on March 22, 2011.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Mauricio Rodriguez (“Defendant”), a federal prisoner incarcerated at the CI Northeast Ohio Correctional Center in Youngstown, Ohio, has filed a motion for a reduction of his sentence in light of recent amendments to the United States Sentencing Guidelines (“Sentencing Guidelines” or “U.S.S.G.”). Defendant argues that this Court should consider his age and his physical, mental, and emotional condition in determining an appropriate sentence. Defendant also seeks a departure from the Sentencing Guidelines based on cultural assimilation. The Government has filed a response to Defendant’s motion, and the Court dispenses with oral argument pursuant to Eastern District of Michigan Local Rule 7.1(f)(2). For the reasons stated below, the Court denies Defendant’s motion.

I. Procedural Background

On January 25, 2000, following a jury trial, Defendant was convicted of one count of conspiracy with intent to distribute a controlled substance and one count of conspiracy to launder monetary instruments. This Court sentenced Defendant to concurrent terms of imprisonment for 188 months, and his convictions were affirmed on appeal. *United States v. Rodriguez*, No. 00-1576, 38 Fed. Appx. 244 (6th Cir. Apr. 29, 2002). Defendant moved to vacate his convictions pursuant to 28 U.S.C. § 2255, and the Court denied his motion on July 14, 2003. The Court denied a certificate of appealability on September 22, 2003, and the Sixth Circuit affirmed this decision.

On December 29, 2010, Defendant filed a motion seeking a reduction in his sentence in light of recent amendments to the Sentencing Guidelines. Defendant claims that as of November 1, 2010, the Court may consider an offender's age and his physical, mental, and emotional condition in determining whether a departure from the Sentencing Guidelines is warranted. Defendant also seeks a departure based on cultural assimilation pursuant to U.S.S.G. § 2L1.2.

II. Discussion

The Court generally “may not modify a term of imprisonment once it has been imposed.” 18 U.S.C. § 3582(c). Congress has provided an exception “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” § 3582(c)(2). In such cases, the statute permits a reduction “consistent with applicable policy statements issued by the Sentencing Commission.” *Id.* The applicable policy statement provides that a reduction is authorized only where the amendment is among those listed in U.S.S.G. §

1B1.10(c). *See* U.S.S.G. § 1B1.10(a)(2)(A).

Defendant does not cite the amendments to the Sentencing Guidelines upon which he relies, but it is clear that his claim relates to Amendments 739 and 740. Amendment 739 revises several policy statements, allowing the Court to consider an offender's age and his physical, mental, and emotional condition in determining whether a departure from the Sentencing Guidelines is appropriate. *See* U.S.S.G. app. C. Amendment 740 provides that the Court may conclude that a departure is appropriate based on cultural assimilation. Both Amendments are effective November 1, 2010, and neither is listed among those given retroactive effect under the Sentencing Guidelines. U.S.S.G. § 1B1.10(c). The Court therefore lacks the authority to modify Defendant's sentence. *United States v. Horn*, 612 F.3d 524, 527 (6th Cir. 2010).

III. Conclusion

Accordingly,

IT IS ORDERED that Defendant's motion for a reduction of his sentence is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
Janice V. Terbush, A.U.S.A.

Mauricio Rodriguez, Reg. #27008-039
CI Northeast Ohio Correctional Center
Correctional Institution
2240 Hubbard Road
Youngstown, OH 44501